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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,207	07/15/2003	Harold L. Cohen	30449.0003	8732
26712	7590	07/26/2005	EXAMINER	
HODGSON RUSS LLP ONE M & T PLAZA SUITE 2000 BUFFALO, NY 14203-2391				ROWAN, KURT C
		ART UNIT		PAPER NUMBER
		3643		

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/620,207	COHEN, HAROLD L.
	Examiner Kurt Rowan	Art Unit 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 May 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
 4a) Of the above claim(s) 11-23 and 27-30 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-10,24-26 and 31-35 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen 5,042,194 for substantially the same reasons stated in the first Office Action. The '194 patent to Cohen shows an insert for an insect control product having as shown in Fig. 1 a first side which is the side facing up and an oppositely facing second side which is the side facing down. Cohen shows the first side having a first portion 12, a middle portion 18 and a third portion 22 with the middle portion being connected to the first portion along a fold line 13 and the third portion connected to the middle portion along a fold line 17. Cohen shows an insecticide coating 70 as disclosed in columns 3-4, line 66- line 16. The coated region can be interpreted as the area that the coating will cover or alternately, the area covered by an adhesive which is the back side of panel 12. Cohen shows a Z-shaped insert when folded as shown in Fig. 3.

3. Claims 1 and 24, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Monett et al. for substantially the same reasons stated in the first Office Action. The patent to Monett shows an insert 12 for an insect control product having a first side and an oppositely facing second side. Monett shows a first portion 12 as shown in Fig. 2 as the left most part of insert 12, a middle portion as the next to the left , and a third

portion. The middle portion is connected to the first portion along a fold line A , A' and the third portion connected to the middle portion along a fold line B, B'. Monett shows a formula 20 applied on a coated region of the first side leaving a noncoated region or portion of the first side. Monett shows the formula applied to a coated region on the second side leaving a noncoated region or portion of the second side. In both cases Monett shows the formula as an adhesive layer 20 between layers 12, 12' which have holes 14 which exposes the adhesive. Monett shows a box or enclosure 40 with an interior surface and an exterior surface defining a plurality of holes 94 for the insects to enter. Monett shows the insert folded into a Z-shaped cross-section such that only noncoated portions of the first side and second sides contact the interior surface of the box.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-5, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen '194.

The patent to Cohen '194 shows an insert for an insect control product as discussed above. In reference to claims 4-5, 9, Cohen shows the coated region covering part of the middle portion and a coated part of the first portion and third portion, but it would have been obvious to cover the entire middle portion to increase the chances of an insect

coming into contact with the insecticide coating. In reference to claim 10, Cohen '194 shows the first portion having a first tab 42 and the third portion having second tabs 36, 38. However, it would have been obvious to provide the first portion with more than one tab for multiplied effect. See *In re Harza*, 124 USPQ 378.

6. Claims 25-26, 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monett et al.

The patent to Monett shows an insect trap with an insert as discussed above. In reference to claim 25, Monett shows the adhesive coating on the first side covering a coated region or part of the third portion, but it does not cover all of the middle portion, but it would have been obvious to cover all of the middle portion to catch more insects. Also, Monett shows the coated region on the second side covers a coated part of the first portion, but not all of the middle portion. It would have further been obvious to coat all of the middle portion on the second side for the purpose of catching more insects. In reference to claim 26, Monett discloses the coating or formula as an adhesive, but it would have been obvious to employ an old and well known insecticide with the adhesive to kill more insects. The examiner takes Official Notice that insecticides are old and well known in insect traps. In reference to claim 32, it is not clear if Monett is assembled in the manner recited by employing the natural spring constant such that the after the housing is compressed the noncoated sides are capable of forcing on the opposed panels to move the housing back to its pre-compressed shape, but it would have been obvious to assemble the insert and the housing in the manner recited since the end result trap is the same and no showing of unexpected results was made.

Response to Arguments

7. Applicant's arguments filed May 16, 2005 have been fully considered but they are not persuasive. Applicant's response overcomes the rejection of claim 7 under 35 USC 112, second paragraph. Applicant's response overcomes the objection to claim 25. Applicant argues that Cohen is for an entirely different article and does not disclose this structure. Cohen is not for an entirely different article and shows the structure of each and every element as those elements are arranged in the recited claim 1. It should be pointed out that applicant used the open-ended term "comprising" which means that the reference can have more elements than what is recited in the claim. Hence, Cohen has not been modified and nothing has been eliminated. Cohen can be considered as an insert since the blank of Cohen can be inserted into a closet or a cabinet. No structure is recited to further limit what constitutes the term "insert". Cohen shows structure that is capable of being inserted. In regard to Monett, applicant argues that Monett does not disclose the identical structure and is for an entirely different structure because it discloses a triple layered composite sheet having upper and lower sheet members with an adhesive between them and that there are openings formed in the upper and lower sheet member. It should be pointed out that the statute does not require that the elements shown by the reference do not have to be arranged as those in the claim. As recited above, the reference must show all the elements recited in the claim and the recited structural relationship between those elements. Monett shows the elements recited in the claim and the recited structural relationship between those elements. Since the open-ended term "comprising" was used, the reference can have

more elements than those recited. Monett shows a formula 20 applied on a coated region of the first side leaving the third portion of the first side noncoated and the formula is applied on a coated region on the second side leaving the third portion of the second side noncoated noting Fig. 5 and column 3, lines 53-65 of Monett which state that the adhesive is applied to portions of all planar surfaces of the sheet member 20. This means that there is coated and uncoated portions of the sheet. In regard to the rejection under 35 USC 103 under Cohen, applicant argues that Cohen does not show coated regions on both the first and second sides. In regard to claim 10, Cohen shows opposed tabs 28, 32, and 30, 34. Applicant argues that elements 36, 38 are not tabs, but element 38 and also element 26 act as tabs to hold the end walls shut as shown in Figs. 1-2.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR